20 July 2015

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Submission on Issues Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008

Medical Assurance Society New Zealand Limited ("MAS") is grateful for the opportunity to submit on the Issues Paper: Review of the Financial Advisers Act 2008 ("FAA") and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 ("FSPA") ("the Issues Paper").

Background

MAS was established in 1921 by a group of doctors in Napier who felt that existing insurance companies were not adequately meeting their needs. Today MAS provides a range of financial services including insurance, lending and investments. Our Members remain predominantly doctors, dentists and veterinary professionals. We also provide financial services to other professional groups, including accountants, architects, engineers and lawyers.

MAS is licensed as a Qualifying Financial Entity ("QFE) and provides services through a face-to-face network of salaried advisers supported by a national Call Centre. Currently we employ 11 Authorised Financial Advisers ("AFAs") and 86 QFE advisers. Our advisers do not receive commissions or incentives based remuneration, and are all employed by MAS. Their performance is assessed on the provision of 'outrageously good service' to our Members which includes the quality of advice provided.

Financial advice is provided by MAS AFAs and QFE advisers in respect of MAS issued products only. These products include a category one KiwiSaver scheme, superannuation scheme and debenture stock term investments. The remaining products are category two and include fire and general insurance, life and disability insurance, business and personal lending, a PIE fund (with term and on-call options) and an on-call debt security savings account.

Not all of the issues raised in the Issues Paper are relevant to MAS. This submission will largely concentrate on those issues which are relevant, although comment will also be made where we hold an opinion on what we feel is good for the advice industry as a whole.

PART ONE: SUMMARY OF GOALS AND KEY RELATED QUESTIONS

This part of the submission provides MAS's brief responses to the key questions in respect to each of the three identified goals of this review and the key questions in respect to the FSPA.

Goal 1: Consumers have the information they need to find and choose a financial adviser

Do consumers understand the complexities of the regulatory framework?

No. We would be interested to understand to what extent that this has been tested. It is our feeling that most consumers make little effort to really research for themselves before selecting an adviser or making a decision to act on advice. Responsibility for consumer education and awareness rests more so with regulators than advisers themselves.

Examples of complexities where consumer awareness is likely low:

- the difference in category 1 and category 2 products and the implication this has for advisers and the advice they can provide; and
- the value, need and purpose of providing primary and secondary disclosures.

Should there be a clearer distinction between advice and sales?

Yes and this is a key issue for MAS. There is a need for greater consumer education on the types of advice and adviser services, as well as increased guidance for advisers from regulators particularly in respect to:

- the line between financial advice and an investment planning service;
- materiality thresholds for breaches; and
- better recognition of the complexities of some products currently categorised as 'simple' category 2 (eg. life, disability and income protection covers).

How should we regulate commissions and other conflicts of interest?

MAS does not use a commission sales model.

The aim of regulating commissions appears to be for consumers to be able to engage with an unbiased adviser. The disclosure model could be strengthened by requiring/enforcing greater disclosure of soft commissions (e.g. sales target travel/gift incentives).

Increased regulation of commissions, particular a ban or restrictions, could have an adverse impact on consumers by reducing access to advice which goals against the goals of the review. Advisers will have to offset the revenue received by commissions and a likely consequence is increased fees for advice services which are in turn passed on to consumers.

This could be a benefit to MAS as consumers look for no, or low fee advice services. The negative is that MAS (and probably a lot of other no/low fee advisers) can only provide a very limited scope of advice.

It would be beneficial to understand the competitive implications for the industry as advisers scrap for lower income streams and/or exit.

Goal 2: Financial advice is accessible for consumers

Does the FAA unduly restrict access to financial advice?

Regulatory boundaries surrounding advice models may limit the provision of advice that carries depth, insight and value. This applies when thinking about how far we take personalised financial advice on KS for example or in defining the boundaries of an investment planning service.

Confusion from advisers about the regime (e.g. holding back from building a strong basis of suitability to support advice where they are concerned about the grey boundary issues between financial advice and an investment planning service) is be a barrier to consumers receiving high quality advice.

How can compliance costs be reduced under the current regime without limiting access to quality financial advice?

There are opportunities for efficiencies with compliance costs by avoiding replication where possible (i.e. by AFAs who are employed by a QFE, or meeting similar compliance obligations across multiple regulators). The ongoing requirements associated with maintaining an Adviser Business Statement ("ABS") are an unnecessary cost when nothing has changed materially since it was previously reviewed.

How can we facilitate access to advice in the future?

Raises an interesting question about the economics of the industry and ensuring that industry structure supports the provision of financial advice around low margin products like GIS and KS in addition to ensuring appropriately skilled advisers deliver advice on life and disability and invest planning services. This raises some further important questions about the value of discrete advice and the different channels available.

Improved information for consumers about how to access advice services and how to select an appropriate adviser would help facilitate access. The Financial Service Providers Register ("FSPR") is an obvious existing tool that could serve this purpose but it is completely ineffective in its current guise.

Goal 3: Public confidence in the professionalism of financial advisers is promoted

Should we lift the professional, ethical and education standards for financial advisers?

The industry does not truly follow the rules of demand and supply because of information asymmetry. There are also difficulties in engaging a new adviser which introduces distortions to the demand and supply equation. Consumers will typically choose an adviser on word of mouth, or through referral networks connected to friends and colleagues, rather than through an objective assessment of an adviser's skill and capability.

Statistics indicate that 15% of advisers have less than 3 years professional experience so there are a lot of advisers in the industry who have not yet been advising through a full market cycle.

These points support that yes the qualification framework should be enhanced.

Should the individual adviser or the business hold obligations?

Where an AFA is employed by a QFE, the QFE should be able to discharge some of the compliance obligations of the individual AFA (eg. annual reporting, ABS). Individual AFAs should however continue to maintain personal accountability for the provision of personalised advice.

Financial service provider registration and dispute resolution

Could the register provide better information to the public?

Absolutely. Is completely ineffective at present. The issues paper indicates an increase in unique users of the register website, but what testing has been done to see the proportion of these who are actually consumers? The information held is not useful for consumers to use to make an informed decision about different advisers. Improvements could be for the FSPR to include copy of disclosure statements and/or ABSs.

How can we avoid misuse of the register by overseas financial service providers?

N/A

What is the impact of having multiple dispute resolution schemes?

The broad range of types of financial service provider ("FSP") make it appropriate for there to be multiple providers, who may specialise within a particular sector or sectors. Competition helps to control the fees that FSPs are exposed to for the service, but competition should not result in any disparity with the financial between providers that incentivises FSPs to minimise their exposure by choosing a provider has a lower cap. Consumer interests should be placed first and regulated. Where concerns are noted out of annual reporting, the Ministry should be able to compel changes as opposed to suggesting them.

PART TWO: KEY FAA QUESTIONS FOR THE REVIEW

All responses are numbered in alignment with the questions as they are set out in the Issues Paper. Where MAS does not answer a question included in the Issues Paper it can be assumed that MAS has not formed an opinion on that question, or that it is not applicable to our business.

1. **Do you agree that financial adviser regulation should seek to achieve the identified goals? If not, why not?**

In a nutshell yes. MAS agrees that maintaining a focus on positive consumer outcomes is a fundamental aspect of the regime.

However, the breadth of products that are captured under the FAA regime should be reviewed. In particular, the nature of consumer credit and fire and general insurance products are such that they are largely provided on a transaction execution / no advice basis and are adequately regulated under their own regimes, including consume protections, outside of the FAA.

- Fire and general insurance products should be exempted/removed from the scope of products captured under the FAA regime. Our experienced has been that consumers do not seek advice on general insurance products that crosses into the personalised advice service space. Sales of products are most commonly in response to an already established/clearly defined need and consumers largely differentiate between choices based on price. Consumer protections within the fire and general insurance have recently been strengthened through a revised Fair Insurance Code improving the standard of practice and service that Insurance Council of New Zealand ("ICNZ") member companies provide to their customers.

- Consumer credit contracts should be exempted/removed from the scope of products captured under the FAA regime. As with general insurances, consumer credit contracts are entered into in response to consumers having already established a specific need to borrow for. In addition, consumer lending is already well regulated through the consumer focused Credit Contracts and Consumer Finance Act 2003 ("CCCFA") particularly in respect to its responsible lending provisions.

2. **What goals do you consider should be more or less important in deciding how to regulate financial advisers?**

MAS views the three stated goals of the review as working symbiotically with each other however, we see increasing public confidence in the professionalism of advisers as being the paramount goal.

Generally MAS supports lifting levels of professionalism in the adviser industry and ensuring that adequate ethical and educational standards are in place for advisers to facilitate the delivery of high quality financial advice.

3. **Does this definition adequately capture what financial advice is? If not, what changes should be considered?**

In principal the definition works well. Improved consumer education would assist in increasing consumer understanding of the types of advisers, adviser services and the parameters that the FAA regime operates within.

4. **Is the distinction in the FA Act between wholesale and retail clients appropriate and effective? If not, what changes should be considered?**

Yes. MAS is comfortable with the current definitions of retail and wholesale clients.

5. **Is the distinction in the Act between a personalised financial service and a class service appropriate and effective? If not, what changes should be considered?**

It is appropriate that the FAA distinguishes between personalised and class services.

However, there is potential for confusion amongst consumers where they form an expectation of having received a personalised service, when in fact they have been given class advice. This is something that should be considered in any approaches for consumer education about the regime. It is also a factor supporting increased educational and ethical standards for all types of advisers as they ultimately are responsible for effectively managing client expectations.

6. **Is it appropriate to have different requirements on advisers depending on the risk and complexity of the products they advise upon?**

Yes, but the current two tiered categorisation of financial products is not effective in achieving this. A better benchmark to guide adviser behaviours is Code Standard 8 of the Code of Professional Conduct for Authorised Financial Advisers ("the Code") requiring advisers to take reasonable steps to ensure that advice is suitable. This shifts the onus onto advisers to exercise their judgement as to the complexity and risks of the service being provided and emphasises the importance of developing an appropriate understanding of a client by undertaking a line of enquiry that is relevant and proportionate to the service being provided.

7. **Does the current categorisation system accurately reflect the level of complexity and risk associated with financial products? If not, how could it be improved?**

The current categorisation of products is flawed for a number of reasons.

- It is an additional level of complexity that creates a barrier to consumer awareness of how the FAA regime is intended to work.

- The categories create a perception implying a lower duty of care in providing advice on 'simple' category 2 products. Any opportunity for advisers to apply, or think that they can apply, a lesser standard of diligence providing financial advice should be avoided if the stated goals of this review are to be achieved.

- Categorising all insurance products, with the exception of investment-linked contracts of insurance, as category 2 products is an example where complexity and risk are not adequately addressed. The negative financial consequences for consumers who are provided with inadequate advice on life, disability or income protection policies are potentially significant.

- Differing categorisation of bank term deposits (category 2) and term deposits offered by non-bank deposit takers ("NBDTs") (category 1) is no longer an accurate reflection of the complexity or risks associated with these products. The NBDT sector has become increasingly regulated since the FAA regime was implemented. The requirement for NBDTs to be licensed by the Reserve Bank of New Zealand ("RBNZ") largely mitigates any material differentiation in risk.

  It is also noted that the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011 treats some term deposits with Public Trust, or with credit unions, as if they were category 2. There is no substantive justification to treat products offered by credit unions in particular more favourably than those issued by other licensed NBDTs.

9. Are the general conduct requirements applying to all financial advisers, including RFAs, appropriate and adequate? If not, what changes should be considered?

The general conduct requirements in the FAA should be broadened. The minimum standards of ethical behaviour and client care set out in the Code (code standards 1 – 13) provide a benchmark of conduct expectations for advisers that should be applied irrespective of the type of adviser.

12. Are the costs of maintaining an adviser business statement justified by its benefits? If not, what changes should be considered?

No. The current ABS requirements are such that the costs associated with maintaining them far outweigh any benefits.

This is particularly relevant to MAS as a QFE licensed entity that employees AFAs. MAS at an entity level sets the systems and procedures for the way business will be carried out as well as setting compliance controls. It is overly burdensome in this circumstance for each individual AFA to also maintain their own individual ABS where they are an employee of a QFE. Employee AFAs of a QFE

entity should be able to rely upon the QFE to discharge their ABS obligations, as they have little control over the systems and procedures that they are expected to adhere to.

13. Is the distinction between an investment planning service and financial advice well understood by advisers and their clients? Are any changes needed to the way that an investment planning service is regulated?

No. That the act provides differentiation between an investment planning service and financial advice indicates that there is intended to be a line between the two. However, it is not clear where this line sits. This is an area that MAS views as being a priority to address.

MAS is explicit in its communication to clients that MAS AFAs do not provide an investment planning service. This is due to the narrow scope of products offered by MAS that advisers can provide advice services on. We obtained a legal opinion from Minter Ellison Rudd Watts that backs this approach as an acceptable compromise between understanding a client sufficiently in order to build suitable financial advice providing that it is clearly communicated to clients that they are not being provided with an investment planning service. This approach means that MAS AFAs, and QFE advisers are able to apply the principles of Code Standard 8 in providing advice that is suitably based on a sound understanding of the client. It is also an approach consistent with the expectations set out in the FMA Guidance Note: Limited Personalised Advice (June 2014).

However, a contrary view is taken by another legal firm (Chapman Tripp, Brief Counsel, 17 October 2014) who view the porous definition of investment planning service in the FAA giving rise to a range of boundary issues affecting AFAs, and non-AFAs who voluntarily elect to apply AFA Code Standard 8 (which requires an up-to-date understanding of the client's "financial situation, financial needs, financial goals and risk profile"). Their view is that any advice service tendered in compliance with Code Standard 8 is automatically deemed to be an investment planning service within the terms of the FAA. As a proxy, therefore QFE advisers (who are not also AFAs) become unable to provide any financial advice on investment products due to the QFE Adviser Business Statement voluntarily electing to hold QFE advisers to the same duty of care in providing financial advice that is expected of its AFA employees.

That there is such a disconnect between the guidance of the FMA and the interpretations by respected legal firms within the financial services sector as to the distinctions between an investment planning service and financial advice is a concern that should be addressed as part of this review.

16. Are the current disclosure requirements for AFAs adequate and useful for consumers?

The information required to be disclosed is appropriate. However there are question marks as to the effectiveness in consumers using this for comparing advisers as intended, or that consumers understand the content.

That consumers will receive at least two forms of disclosure (if not more depending on the services to be provided) from an AFA adviser is potentially confusing and is contrary to the principle of clear, concise and effective communication.

17. Should any changes be considered to improve the relevance of these documents to consumers and to reduce the costs of producing them?

AFA advisers who are employees of a QFE should be able to have greater reliance on the QFE disclosure prepared for the employer. This will reduce the costs associated with their production, and to mitigate version control risks where changes at a QFE level flow through to each individual AFA employee.

There should be a consistent approach to identifying which information is most useful to consumers and delivering it in a concise and easily understood way. The present requirements of having AFAs provide multiple disclosures (primary and secondary) is not effective in achieving this.

Consideration should be given to the best mechanism for the delivery of disclosure, particularly primary disclosure requirements, if the intent is for this information to be of use for consumers to compare advisers. The Financial Service Providers Register ("FSPR") appears to be a logical, and presently underutilised, channel for distributing important information for consumers about adviser services.

18. Do you think that the process for the development and approval of the Code of Professional Conduct works well?

We do not have any concerns over the processes in place for the development and approval of the Code. We do emphasise though that the principles of the Code should be applied consistently across all financial advisers, not just AFAs.

21. Should the jurisdiction of the Financial Advisers Disciplinary Committee ("FADC") be expanded?

Yes. Any adviser who provides personalised advice should be within the jurisdiction of the committee.

22. Does the limited public transparency around the obligations of QFEs undermine public confidence and understanding of this part of the regulatory regime?

Certainly we agree that public understanding of what a QFE is, and what its obligations are, is low. MAS does not perceive any lack of confidence in its own business as a result however.

23. Should any changes be considered to promote transparency of QFE obligations?

Currently the ABS of a QFE has the sole purpose to provide the FMA with information it needs about the entity in order to carry out its licensing and monitoring activities. The ABS could be restructured into a consumer document that provides additional information about a QFE for those consumers who are seeking more detail than is provided in a QFE disclosure statement.

The FSPR is presently underutilised and could be an appropriate mechanism for the dissemination of all important information about QFEs (and other FSPs) as opposed to information being held across the websites of multiple government agencies at present (FSPR, FMA, RBNZ, etc).

24. Are the current disclosure requirements for QFE advisers adequate and useful for consumers?

We are of the opinion that the current content of a QFE disclosure statement is adequate but that disclosure statements themselves are not read, or understood, by consumers.

25. Should any changes be considered to improve the relevance of these documents to consumers or to reduce the costs of producing them?

Again, we support the creation of a centralised portal (e.g. the FSPR) for all FAA related documentation of importance to consumers. This would ensure that consumers always have access to up-to-date information about their adviser/QFE entity, or advisers/QFE entities that they are considering engaging with.

32. Is the scope of the FAA exemptions appropriate? What changes should be considered and why?

The exemption of accountants and lawyers from the application of the FAA is not consistent with the consumer protection focussed goals of the Act.

This view also extends to non-profits providing free financial adviser service. Typically these services would be provided to those consumers who are most financially vulnerable and/or financially illiterate. It is not logical that the Act in place for consumer protection would therefore expose them to the potential consequences of receiving poor advice from persons unskilled, or unqualified but acting in the capacity of an adviser for these services. Alternatively, such organisations should be restricted to providing class advice and factual information only.

Any person providing personalised advice should be held to the same minimum standards of conduct and qualification, irrespective of their underlying occupation or industry.

33. Does the FAA provide the FMA with appropriate enforcement powers? If not, what changes should be considered?

MAS has no issues with the level of enforcement powers afforded to the FMA under the present legislation.

34. How accessible and useful is the guidance issued by the FMA? Are there any improvements you would like to see?

We have had no problems in accessing the guidance that has been issued to date and it has been useful to guide the setting of our own processes and controls in the advice space.

Two particular gaps that we perceive require additional guidance are:

- Guidance on breach reporting and the FMA's expectations around identifying breaches, and determining materiality; and

- Guidance clarifying the boundary lines between financial advice and an investment planning service.

We have found the practical examples used throughout the FMA's monitoring activity reports illustrating best practice observations also of use when considering our own processes. These are a real value add to these reports.

However, the volume of regulatory updates and changes is sometimes an issue and can be challenging to keep abreast with. This is particularly emphasised that as a QFE we are being hit by multiple changes on a number of regulatory fronts (FMCA, IPSA, NBDT, CCCFA, FAA, etc) over a relatively short period of time. It is therefore imperative that any guidance is timely and is of high quality in clearly setting out expectations.

36. To what extent do consumers understand that some financial advisers' primary roles may be selling financial products, rather than solely acting as an unbiased adviser to their clients?

Unless the scope of what services can be provided to them is clearly explained, and they read the disclosure documents (which we know to be rare), then we don't think that consumers do understand the differentiation.

37. Should there be a clearer distinction between sales, information provision, and advice? How should such a distinction be drawn? What should or should not be included in the definition of financial advice?

Although there is onus on advisers to communicate clearly and not be misleading and therefore communicate what service is, or is not, being provided the terminology should be simplified to make it easier for consumers to understand.

The use of advice as a term, should reflect situations only where suitability has been assessed (i.e. personalised advice).

Class advice, should be differentiated as it is largely product information based and does not reflect any assessment of suitability to a particular client's needs. It should be termed as such. Something along the lines of "product sales information" as suggested for the Australian regime (box 1, paragraph 122 of the Issues Paper) could be appropriate.

38. Do you think that current AFA disclosure requirements are effective in overcoming problems associated with commissions and other conflicts of interest?

Looking past the already mentioned issue of consumers not reading or understanding disclosure statements, the disclosure model is partially effective as it currently stands. It could be improved however by requiring/enforcing greater disclosure of soft commissions (e.g. sales target travel/gift incentives).

Salaried advisers may also be conflicted where their employer sets sales KPIs to measure their performance. This is a bias issue that is not adequately addressed in the current disclosure requirements.

39. How do you think that AFA information disclosure requirements could be improved to better assist consumer decision making?

Refer to response for question 38 above.

40. Do you support commission and conflict of interest disclosure requirements being applied to all financial advisers? If so, what requirements are appropriate for different adviser types?

Yes. Mandated disclosure of all forms of remuneration and conflicts of interest should be applied irrespective of the type of adviser.

41. Do you think that commissions should be restricted or banned in relation to financial advice, and if so, in what way? What would be the costs and benefits of such an approach?

Whilst MAS advisers do not receive commission based income, we recognise that they are an integral part of the distribution model for the financial advice industry in New Zealand.

If properly disclosed, the issue of conflict of interest can be avoided, or at least minimised. Removal of commissions will lead to advisers seeking to offset income through other means, most likely fees, and this will create barriers for affordable access by consumers to financial advice which is contrary to goal 2 of this review. Consumers would seek the lowest cost advice, which could limit the access they have to a broad range of products, as low, or no cost, financial advice providers may only have limited scope of which they can provide advice on. MAS is an example of this – no fees to receive financial advice, but advisers are limited to only being able to provide advice on MAS issued products. Consumers may not understand the risks associated, or impacts on suitability of the advice that they will receive, in seeking out advisers based on cost to access their services.

However, the soft commission incentives do need to be removed or more tightly regulated as these can potentially impact on adviser behaviours. They also are a negative perception that does nothing to strengthen public confidence in the financial advice industry.

42. Has the right balance been struck between ensuring advisers meet minimum quality standards and ensuring there is competition from a wide range of providers (and potential providers)?

We disagree that competition should be an aim of the FAA. Minimum quality standards should reflect the appropriate qualification and competence of advisers to provide quality advice to consumers and competition within the industry should not be a factor in determining the appropriate setting of this standard.

43. What changes could be made to increase the levels of competition between advisers?

As per the response to question 42, we disagree that competition between advisers should be an aim of the FAA regime.

44. Do you think that the Code of Professional Conduct for AFAs strikes the right balance between requiring them to understand their clients and ensuring that consumers can get advice on discrete issues?

The Code itself does strike the right balance to achieve this. Boundary issues such as that between financial advice and an investment planning service, and differing interpretations of how the Code is applied is a concern that needs to be addressed [see response to question 13].

45. To what extent do you think that the categorisation of types of advice and advisers is distorting the types of advice and information that is provided?

Outside of the issues of consumer awareness and understanding, we don't necessarily see the categorisation of the types of advice and advisers as significantly distorting the types of advice or information that is provided.

46. Are there specific compliance requirements from the FAA regulation that have affected the cost and availability of independent financial advice?

We do not believe that the availability of our own financial advice services have been affected, but we do feel that the costs of compliance are inflated by inefficiencies with the regime. Key of these is being unable to consolidate the individual obligations of maintaining an ABS and disclosure statements of employee AFAs into those prepared at the QFE level.

47. How can regulatory requirements be made less onerous without reducing the quality and availability of financial advice?

Efficiencies can be created without impacting on quality or availability of advice. This is particular relevant to MAS as a QFE that employs a number of AFA advisers. It is desirable from an efficiency,

risk management and cost perspective to be able to discharge some of the AFA obligations (ABS maintenance, disclosure and annual reporting) at the QFE level.

48. What impact has the Anti-Money Laundering and Countering Finance of Terrorism Act had on compliance costs for advisers? How could these costs be minimised?

The cost of developing appropriate Anti-Money Laundering and Countering Financing of Terrorism ("AML/CFT") controls was significant. Whilst costs have reduced, the ongoing obligation to carry out due-diligence, monitoring, programme review and audit are not insignificant.

However, MAS recognises that New Zealand has a sovereign obligation to have appropriate AML/CFT legislation in place.

One factor, although not relevant specifically to MAS, is that most independent financial advisers do not actually handle client funds at any stage in the advice process, yet are captured in the broad net of AML/CFT reporting entities. This seems unnecessary given that sector risk assessments identify risk of money laundering or terrorist financing to be low for these advisers, and any client will be subject to appropriate due-diligence by another reporting entity at the point of transaction.

49. What impact do you expect that KiwiSaver decumulation will have on the market for financial advice in New Zealand? Are any specific changes to regulation needed to specifically promote the availability of KiwiSaver advice?

We don't see this as being a particularly significant issue at present where withdrawal amounts are generally lower due to the short timeframe from inception. However, over time the importance of being able to access quality financial advice ahead of retirement will grow commensurate with the increased size of withdrawals and investors reliance on their savings to meet retirement income needs.

MAS supports the suggestion raised by the Society of Actuaries at a recent meeting, that investors in KiwiSaver be provided with a nominal amount (say $1,000) within five years of age of eligibility to provide specifically for access to a financial adviser to plan for the decumulation of their retirement savings.

50. What impact do you expect that the introduction of the Financial Markets Conduct Act ("FMCA") will have on the market for financial advice in New Zealand? Should any changes to the regulation of advice be considered in response to these changes?

We disagree with the notion in the Issues Paper (paragraph 167), that the FMCA will have an impact on the demand for advice. It is already established that consumer awareness about advice and securities regimes is low and this will not change without active promotion and education to lift public awareness.

There are potential issues around duplication of regulatory obligations that are unnecessary and inefficient. For example, the FMCA introduces accountability for product information or class advice, an area which also falls within the scope of the FAA. Where possible, duplication of obligations or creation of very similar obligations in other legislation (or the FAA) should be avoided. This is an issue that is not unique to the FMCA (the responsible lending provisions of the CCCFA is another example of regulatory duplication with the FAA) though.

53. In what ways do you expect new technologies will change the market for financial advice?

The financial advice market is open for a disruptor model that challenges the status quo for how adviser services are distributed. Demand from consumers for technology based solutions is arguably far advanced from where the industry and regulatory environment is currently at.

Advice services are already available online, and from outside of New Zealand's jurisdiction creating difficulties in how to effectively regulate and enforce them. The challenge will be to find an adequate balance of regulation. If regulatory barriers are set too high, consumer access to quality local services could be impeded, forcing consumers to seek services elsewhere without an understanding of the risks of doing so, or any recourse if things go wrong.

54. How can government keep pace with technological developments to ensure that quality standards for advice are maintained, without inhibiting innovation?

As per the answer to question 53 above, any regulation cannot be overly prescriptive. Innovation in the way that advice services are provided needs to be encouraged. Consumer education needs to include a component on the potential pitfalls of selecting an online advice service and the risks of exposure to fraudulent or scam activity.

55. Are the minimum ethical standards for AFAs appropriate and have they succeeded in fostering the ethical behaviour of AFAs?

The Code sets out minimum ethical standards for AFAs that are clear and appropriate. We are not in a position to comment on their success, other than to note that the low number of cases coming before the FADC and the reported outcomes of the FMAs monitoring activities seem to suggest so.

56. Should the same or similar ethical standards apply to all types of financial advisers?

Absolutely. MAS feels strongly that ethical standards expected of advisers should be consistent irrespective of the type of adviser.

57. What is an appropriate minimum qualification level for AFAs?

MAS feels that the current level 5 National Certificate in Financial Services (Financial Advice) is an appropriate minimum qualification. There should be both an academic (e.g. Graduate Diploma in Personal Financial Planning) and vocational pathway to attaining the level of qualification expected of an AFA.

Consideration should be given to encouraging attaining higher qualifications as part of the continuing professional development requirements and this is something that professional associations could help in facilitating.

Higher than minimum qualifications should be mandated in order for advisers to be authorised to provide more complex services (for example discretionary investment management services ("DIMS")).

58. Do you think that RFAs (for example insurance or mortgage brokers) should be required to meet a minimum qualification relevant to the area of advice they specialise in? If so, what would be an appropriate minimum qualification?

We would strongly advocate for there being minimum standards of qualification for anyone providing personalised advice services. RFAs if providing advice in a specific area should be appropriately qualified to do so.

A vocational pathway for QFE advisers to achieve the minimum level of qualification should also be considered.

59. How much consideration should be given to aligning adviser qualifications with those applying in other countries, particularly Australia?

Over time this may happen. At present though, we feel that each market and regulatory regime has its own unique characteristics that do not make it immediately appropriate to be considering alignment of the qualifications structures.

62. Should any changes be considered to the relative obligations of individual advisers and the businesses they represent? If so, what changes should be considered?

Yes – particularly in MAS's case where we are both a QFE and an employer of AFAs. From a cost and efficiency perspective, it is highly desirable that we are able to discharge some of the obligations of or AFA employees.

Examples of where this could be appropriate include:

- Disclosure;
- ABS maintenance; and
- Annual reporting.

We do recognise the importance of AFAs retaining personal accountability though for the advice that they provide, however that accountability should be jointly shared by the QFE in respect to deficiencies with processes and controls.

63. Is the QFE system achieving its goals in terms of consumer protection and reducing compliance costs for large entities? If not, what changes should be considered?

Yes, we believe that the QFE system is effective in achieving the goals of consumer protection. However, low transparency of information about QFEs and their obligations, and low public awareness of the QFE system may mean that public perceptions differ.

There are still inefficiencies in managing compliance costs across both the QFE and AFA employees as been highlighted in question 62 above, and elsewhere in this submission.

PART THREE: THE FINANCIAL SERVICE PROVIDERS (REGISTRATION AND DISPUTE RESOLUTION) ACT 2008

64. Do you agree that the Register should seek to achieve the identified goals? If not, why not?

Yes.

65. What goals do you consider should be more or less important in reviewing the operation of the Register?

The usefulness of the FSPR to consumers, and lifting their awareness of it, has to be of paramount importance. In its current guise, the FSPR is a woefully inadequate tool for help consumers make any sort of informed decision about a financial service provider.

The opportunity exists to transform the FSPR into a very useful tool as a centralised portal for information that allows for consumers to make objective comparisons between financial advisers and other financial service providers.

The information contained in the FSPR to achieve this could include:

- Up to date disclosures;
- Conditions attached to authorisations or QFE licences;
- Qualifications;
- Areas of specific competency
- General information about services (ABS revised to exclude commercially sensitive information);
- Professional association memberships;
- Disputes resolution membership.

66. Do you agree that the dispute resolution regime should seek to achieve the identified goals? If not, why not?

Yes.

67. What goals do you consider should be more or less important in reviewing the dispute resolution regime?

In order to have confidence in the dispute resolution regime, consumers must firstly be aware that it exists, and then know how to access it.

There should be no disparity in the compensation caps that can be considered by disputes resolution schemes that could make a scheme competitively more attractive to FSPs looking to limit their exposure, but which is not consistent with good consumer protection and confidence outcomes.

To be effective, and to avoid the financial pressures and stress on consumers of having to take court action, compensation caps should be set at levels reasonably commensurate to the products behind any dispute as opposed to an across the board maximum cap for consideration as is presently the case. The current limit of $200k may be appropriate for some financial products (e.g. investments and some insurance covers (e.g. domestic contents)), but it is well below could be considered reasonable for life insurance disputes (provision in a life policy to cover debt on an average mortgage would easily exceed this) or to provide for house insurance total loss claims where reasonable replacement of an average home in the event of a total loss far exceeds the current cap.

Therefore, in order to achieve public confidence in the disputes resolution regime, consideration should be given to a tiered compensation cap structure that is more closely aligned with what is reasonable for the type of product or service concerned.

There should be standards for FSPs to make any payments decided by a disputes scheme to consumers in a timely manner. This should be backed by financial or other penalties, for failure to do so.

68. Does the FMA need any other tools to encourage compliance with FSP registration? If so, what tools would be appropriate?

No. We don't perceive any issues in understanding as an FSP what registration obligations are. There are adequate penalties for non-compliance in the existing legislation.

69. What changes, if any, to the minimum registration requirements should be considered?

The minimum requirements are adequate at present.

It should be noted though that there are frustrations with inconsistency in the application or expectations under different pieces of legislation administered by different regulators within the financial services sector. For example, the RBNZ requires criminal checks to be provided for their suitability assessments of directors and senior management under the NBDT regime, and the FSPR also requires criminal checks to be undertaken on the same individuals in order to register their association with the NBDT as an FSP. This is another example of duplication of compliance burden and cost that should be avoided by government where possible.

70. Does the requirement to belong to a dispute resolution scheme apply to the right types of financial service providers?

Yes. Retail clients should not be unnecessarily forced into undertaking costly, lengthy and stressful legal action through the courts except in exceptional or complex situations, therefore it is appropriate that all FSPs providing services to retail clients be compelled to be a member of such a scheme.

73. Is the existence of multiple schemes and the incentive to retain and attract members sufficient to ensure that the schemes remain efficient and membership fees are controlled?

Yes. The number of schemes presently in operation is adequate to provide the necessary competitive environment to self-regulate fees and maintain them at a reasonable level.

74. Should the $200,000 jurisdictional limit on the size of claims that dispute resolution schemes can hear be raised in respect of other types of financial services, and if so, what would be an appropriate limit?

Yes. An across the board cap is ineffective in achieving the goal of public confidence, as it is not aligned with what a reasonable amount would be for a number of retail products. For example an average term life policy put in place to primarily cover mortgage debt is likely well over the current cap, as is any total loss home claim for an average property..

A tiered approach should be taken. The compensation cap could be lower for some products (e.g. domestic contents claims) and higher for others (e.g. house claims, life insurance disputes).

75. Should additional requirements to ensure that financial service providers are able to pay compensation to consumers be considered in New Zealand?

No. Adequate regulation and controls exist under other legislation (e.g. IPSA, NBDT Act, RBNZ Act, FMCA) to enable regulators, supervisors or trustees to monitor performance of FSPs and enable early identification of any potential systemic issues that may lead to failure.

76. What features or information would make the Register more useful for consumers?

Information that will help consumers make informed decisions about whether to accept or enquire about financial services with an adviser or other FSP.

The information contained in the FSPR to achieve this could include:

- Up to date disclosures;
- Conditions attached to authorisations or QFE licences;
- Qualifications;
- Areas of specific competency

- General information about services (ABS revised to exclude commercially sensitive information);
- Professional association memberships;
- Disputes resolution membership.

77. Would it be appropriate for the Register to include information on a financial adviser's qualifications or their disciplinary record?

Yes. We feel that the types of information currently required to be in an adviser's disclosure statement should be available, and kept up to date, via the FSPR.

80. What are the effects of (positive and negative) competition between dispute resolution schemes on effective dispute resolution?

We reiterate the point made in our response to question 73 that a competitive environment is beneficial to self-regulate fees and maintain them at a reasonable level.

81. Are there ways to mitigate the issues identified without losing the benefits of a multiple scheme structure?

The regulatory framework should concentrate on maintaining consistency in the rules and jurisdiction of disputes scheme as it is these factors that present the greatest risk to public confidence. We can see how confusion issues may arise with consumers not being aware of who to take a complaint to in the situation where they are dealing with multiple FSPs (e.g. a financial adviser who is a member of one scheme, and a fund manager who is a member of another). This risk can be mitigated though through increased consumer education or by considering ways to improve communication between disputes schemes themselves rather than putting the onus on consumers themselves to correct mistakes if they lodge a dispute with an incorrect scheme.

82. Are the current regulatory settings adequate in raising awareness of available dispute resolution options? How could awareness be improved?

Awareness of access to available dispute resolution options should be a component of broader consumer education to raise awareness of the FAA and improve financial literacy in general.

Submission prepared by:

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